(2016) 01 DEL CK 0275

In the Delhi High Court

Case No : LPA 330/2005 and CM No. 1802 of 2005

Co-operative Co. Ltd. APPELLANT

Vs

D.T.T.D.C. and Others RESPONDENT

Date of Decision : 04-01-2016

Acts Referred:

Citation : (2016) 1 ADDelhi 757 : (2016) 226 DLT 400

Hon'ble Judges : G. Rohini, C.J. and Rajiv Sahai Endlaw, J.

Bench : Division Bench

Advocate : Rana Parveen Siddiqui, Advocate, for the Appellant; S.B. Upadhyay, Sr. Adv., Vikrant Yadav and K.P. Pathak, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

G. Rohini, C.J.

1. The unsuccessful petitioners in W.P.(C) No. 2612/1991 preferred this appeal aggrieved by the dismissal of the writ petition by order dated 9.12.2004. The appellant/petitioner is a wholesale supplier of country liquor in Delhi and was holding licence granted in Form L9 under the Punjab Excise Act, 1914 as extended to Delhi read with Delhi Liquor Licence Rules, 1976. The respondent No. 1, the Delhi Tourism and Transportation Development Corporation Ltd. (for short "the Corporation") is holding a retail licence in Form L10 for retail sale of country liquor and 50? Rum in the Union Territory of Delhi. For the excise year 1991-92, the appellant was awarded a contract by the Corporation for wholesale supply of country liquor and Rum in Delhi.

2. The distilleries of appellant are situated at Saharanpur and Sahibabad in the State of Uttar Pradesh from where the country liquor manufactured by it was imported and stored in its bonded warehouse in Delhi on the basis of licence in Form CLW-1 issued under the Delhi Country Liquor Bonded Warehouse Rules, 1976 From the warehouse, the liquor was supplied/sold to the retail vends of the Corporation under the direct supervision of the staff posted by the Excise

Department. It is not in dispute that the appellant is required to deliver the country liquor at the retail vends of the Corporation.

3. The price structure for wholesale supply of country liquor and 50? Rum to retail sale vends for the year 1991-92 was fixed by the Commissioner of Excise, Delhi Administration vide proceedings dated 9.5.1991 in terms of Rule 34(11) of Delhi Liquor Licence Rules, 1976 and the said price structure included the components of: (i) wholesale price, (ii) special duty, (iii) excise revenue, (iv) retailers, margin, (v) sale price and (vi) sales tax.

4. Section 23 of the Punjab Excise Act, 1914 as extended to Delhi (hereinafter referred to as "the Act") provides that no intoxicant shall be removed from any distillery, brewery, warehouse or other place of storage established or licensed under the Act unless the duty, if any payable under Chapter-V has been paid or a bond has been executed for payment thereof. As per the practice, the retailer, i.e., the Corporation deposits in advance the "special duty" at the time of obtaining transport passes and there is no dispute regarding the liability of the appellant, i.e. wholesaler to reimburse the same, including the "special duty" on transit wastage (wastage on account of broken bottles in transit) from bonded warehouse to retail vends of the Corporation in view of the judgment of this Court in Modi Industries Limited and Another v. Lieutenant Governor of Delhi and Ors., , 48 (1992) DLT 209 (DB) : DRJ 1992 (24) 149. However, the dispute is regarding the component of "excise revenue" on such transit wastage. While the Corporation claims that apart from "special duty" the appellant/writ petitioner is liable to pay the "excise revenue" also on transit wastage of liquor, the appellant/ writ petitioner contends that they are not liable to pay the same and therefore, the Corporation is not entitled to recover/deduct any amount from their bills towards "excise revenue" on transit wastage.

5. Aggrieved by the action of the Corporation in making the appellant liable to reimburse "excise revenue" on transit wastage, i.e., broken bottles of liquor in transit from the bonded warehouse to retail vends, the appellant filed W.P.(C) No. 2612/1991. The said writ petition along with a batch of writ petitions filed by similarly situated licensees was dismissed by the learned Single Judge by the order under appeal dated 9.12.2004. Hence, the present appeal.

6. We have heard the learned Counsel appearing for both the parties.

7. The learned Single Judge opined that "excise revenue" is nothing but "countervailing duty" and thus held that the appellant/writ petitioner is liable to pay "excise revenue" even in respect of broken bottles after the bottles leave the bonded warehouse and prior to their reaching the vends of the retailers as is being done in the case of "special duty".

8. The order of the learned Single Judge is assailed before us contending that the conclusion in the order under appeal that "excise revenue" can be equated to countervailing duty, is erroneous. It is contended by the learned Counsel for the Appellant that the "excise revenue" is not a "duty" and has no nexus with the

established principles of imposition of duty. Placing reliance upon Clauses 4 and 5 of the Tripartite Agreement entered into between the Corporation, the Commissioner of Excise and the appellant, it is submitted by the learned Counsel that the appellant who is a wholesale licensee is liable to pay only "special duty" on transit wastage but not "excise revenue". Pointing out that the Punjab Excise Act, 1914 has been amended by Act No. 12 of 1979 w.e.f. 20.1.1979 by virtue of which "special duty" has been included in the duty on excisable articles, it is submitted by the learned Counsel for the appellant that since the said amendment was not brought to the notice of the learned Single Judge, the conclusion in the order under appeal on the basis of the unamended provisions of the Act are erroneous and unsustainable.

9. We have also heard the learned Counsel for the respondents and perused the material available on record.

10. The term "excise revenue" has been defined under Section 3(9) of the Act as revenue derived or derivable from any payment, duty, fee, tax, confiscation or fine imposed or ordered under the provisions of the said Act or any other law for the time being in force relating to liquor or intoxicating drugs but does not include fine imposed by Court of law. It is clear from the definition itself that "excise revenue" includes not only the revenue derived but also the revenue derivable. It also specifically includes revenue from "duty".

11. As we could see the contention of the appellant/petitioner before the learned Single Judge was that the "excise revenue" being a profit, it could not be recovered from the petitioner in case of broken bottles since if there is no sale, there would be no revenue/profit. The said contention was not accepted by the learned Single Judge observing:

"39. A reading of the definition clauses under Section 3 of the Act would show that the concept of excise duty and countervailing duty has been referred to in Sub-section 6(b) with reference to Entry 51 of List II in the 7th Schedule to the Constitution of India. Under Sub-section (6) of Section 3 alcoholic liquor is an excisable article. Under Sub-section (9) of Section 3 excise revenue has been defined. The definition is wide to include any payment, duty, fee, tax, confiscation or fine imposed or ordered under the provisions of the Act of any other law for the time being in force. There is no doubt that there is a difference in the definition clauses but then excise revenue is a wider terminology than countervailing duty. The term excise revenue has, however, not being defined to include profits as contended by learned Counsel for the petitioners. If all the definitions, terms are read together, it is apparent that excise revenue is a revenue of a particular kind arising from dues, fees, tax, fine, etc., and the word payment has to be read along with such terms. I am thus unable to accept the plea that excise revenue is in the nature of a profit even though the same is a variable The component of excise revenue is variable only on account of the fact that though the other components of the retail price are fixed excise revenue would be the balance between the fixed components and the retail price The retail price has also been fixed and has been kept at a particular level in view of a conscious decision of the Government for the last about two decades. The wholesale price would vary and accordingly the excise revenue would increase or decrease."

12. After referring to various provisions of the Punjab Excise Act 1914 Delhi Liquor Licence Rules, 1976 and Delhi Country Liquor Bonded Warehouse Rules 1976 as well as the terms and conditions for grant of Form L9 licence and following the law laid down in S.K. Pattanaik (Dead) through LRs v. State of Orissa & Ors. , X (1999) SLT 479 : AIR 2000 SC 612, the learned Single Judge rejected the further contentions of the writ petitioner holding that:

"43. ....I am in agreement with the submission of the learned Counsel for the respondents that a reading of the relevant provisions of the Warehouse Rules makes it clear that once the consignment comes to the bonded warehouse, the Government must get its dues. Section 31 of the Act falls in Chapter V dealing with dues, fees and authorises duty of excisable articles. The fact that same has split into two dues being the special duty and excise revenue would not make any difference since basic principle is the same in respect of both and the principle of countervailing duty would apply in both the cases. The submission of bond only postpones the payment of both these levies and the bond is for a fixed amount and not for any particular levy. Excise revenue is really nothing but countervailing duty.

44. There are no principles of equality involved in such matters of taxation and duty and thus even in M/s. Mohan Meakin Breweries Ltd. case (supra) the Supreme Court held that the duty was payable on liquor including what was manufactured and sent but did not reach the destination. These principles would also apply in the present case.

13. The above conclusion which is based on proper interpretation of the provisions of the Act and the Rules made thereunder, in our considered opinion, warrants no interference on any ground whatsoever.

14. It is no doubt true that the amendment to Punjab Excise Act, 1979 w.e.f. 20.1.1979 was not specifically referred to, however, the learned Single Judge had taken into consideration the corresponding amendment made to Rule 38 of the Delhi Country Liquor Bonded Warehouse Rules, 1976 vide Notification dated 18.4.1980. At any rate, according to us, the provisions of the Amendment Act have no bearing on the controversy in issue. In fact, by inserting the definition of "duty" and "special duty" under Section 3(5a) and Section 3(18) of the Act and also by substituting Section 31 of the said Act, the ambiguity regarding the liability to pay the "excise revenue" in addition to "special duty" has been clarified. We are, therefore, of the view that the conclusion of the learned Single Judge that appellant/writ petitioner is liable to reimburse the "excise revenue" also in addition to "special duty" cannot be found fault with. For the aforesaid reasons, the appeal is devoid of any merit and the same is accordingly

dismissed. No costs.

